



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

September 30, 2003

Ref:8ENF-T

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Marilyn Connolly, Chair
Johnson County Commissioner
76 North Main Street
Buffalo, WY 82834

Re: Notice of Complaint and Notice of
Opportunity for Hearing Against
Pines Lodge
Docket No. **SDWA-08-2003-0074**

Dear Ms. Connolly:

Pursuant to Section 1414(a)(2)(B) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(a)(2)(B), the Environmental Protection Agency (EPA) is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

EPA is issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") under Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3) to Pines Lodge in Buffalo, Wyoming for a proposed penalty of \$3,000.00. Pines Lodge is in violation of an Administrative Order (Docket No. SDWA-08-2002-12), which requires compliance with 40 CFR §§ 141.23(d), 141.21(a), 141.201 and 141.31(d). Pines Lodge has failed to monitor for nitrate and total coliform bacteria, failed to submit a sample siting plan, failed to provide public notice of violations, and failed to report National Primary Drinking Water violations to EPA after issuance of the Order.

A copy of this Complaint is enclosed for your information. The Complaint does not require any response or action by the County Commission.



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If you would like to discuss this matter further, please feel free to contact me directly at 303/312-6051. If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
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September 30, 2003

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward Sickler, Owner
Pines Lodge
POB 100
Buffalo, Wyoming 82414

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2003-0074**

Dear Mr. Sickler:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against Pines Lodge, under Section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that Pines Lodge failed to comply with an Administrative Order, Docket No. SDWA-08-2002-12 issued on April 24, 2002, under Section 1414(g) of the SDWA, 42 U.S.C. Section 300g-3(g). The violations are specifically set out in the Complaint.

By law, you have the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by your counsel.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement



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shall be finalized by the issuance of a Final Order by the Regional Judicial Officer, EPA Region 8. The issuance of a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with, the adjudicatory hearing.

Continued noncompliance with the requirements of the Administrative Order may result in referral of this matter to the Department of Justice. In addition, noncompliance with federal regulations may have a bearing on the Special Use Permit that the Forest Service has issued to you. We are forwarding a copy of the complaint to the Forest Service so that it can take whatever action it considers appropriate.

If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Larry Robinson, WYDEQ
Dr. Karl Musgrave, WYDOH
Gayle Laurent, Bighorn NF

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	
)	
Edward Sickler)	
Pines Lodge)	
POB 100)	
Buffalo, Wyoming 82414)	
)	Docket No. SDWA-08-2003-0074
Respondent)	
)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Proceedings under section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	
)	

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42 U.S.C.

§ 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$25,000, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil

Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice") (Complainant's Attachment 1).

GENERAL ALLEGATIONS

1. Edward Sickler ("Respondent" or "you") is an individual and therefore a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Pines Lodge water system ("System"), located in Johnson County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of Section 1401(6) of the SDWA, 42 U.S.C. § 300f(16), and a "non-community water system" within the meaning of section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the

SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141.

5. One source of the System's water is an infiltration gallery that EPA has determined to be groundwater under the direct influence of surface water. Another source of the System's water is a ground water well. The System serves an average of 50 persons daily through 7 service connections and is open year round, but, based upon information from the system, serves an average of 25 or more people only from May through October.
6. On April 24, 2002, EPA issued an Administrative Order (Docket No. SDWA-08-2002-12) to the Respondent pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs). A copy of the Administrative Order is attached to this complaint and incorporated herein (Complainant's Attachment 2). The effective date of the Administrative Order was April 24, 2002.
7. The Administrative Order required the Respondent, among other things, to achieve compliance with the NPDWRs, 40 C.F.R. part 141, in accordance with the schedule set forth in the Administrative Order.
8. On April 15, 2003, EPA sent Respondent a "Violation of Administrative Order" letter citing Respondent's failure

to comply with the Administrative Order, the SDWA and the NPDWRs. (Complainant's Attachment 3).

SPECIFIC ALLEGATIONS

Count I

Failure to Monitor Groundwater Source for Nitrate

9. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
10. Page 8 of the Administrative Order, in paragraph 5 of the "Order" section, required Respondent to comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b) for the ground water well within 30 days from the effective date of the Order. It also required Respondent to report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
11. Respondent failed to monitor the System's ground water source for nitrate within thirty days of the effective date of the Administrative Order, in violation of the Administrative Order and 40 C.F.R. § 141.23(d).

Count II

**Failure to Monitor Adequately and
Submit Sample Results for Total Coliform Bacteria**

12. 40 C.F.R. § 141.21(a) requires public water systems to monitor their water at least once per month to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
13. Page 6 of the Administrative Order, in paragraph 1 of the "Order" section, required Respondent to comply with the requirements of 40 C.F.R. § 141.21(a) to perform monthly bacteriological monitoring for both the ground water source and the source that has been determined to be groundwater under the direct influence of surface water. Further, it required Respondent to report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
14. Respondent failed to monitor one of the sources for the month of June 2002, in violation of the Administrative Order and 40 C.F.R. § 141.21(a). Due to the Respondent's failure to submit a sample siting plan or any other clarifying information, it was not apparent which of the Systems's two sources the Respondent failed to monitor.

Count III
Failure to Submit a Sample Siting Plan

15. 40 C.F.R. § 141.21(a) requires public water systems to have a written sample siting plan.

16. Page 6 of the Administrative Order, in paragraph 2 of the "Order" section, required Respondent to submit to EPA a sample site plan that includes the system configuration and locations where monthly total coliform samples will be taken within 30 days of the effective date of the Order.
17. Respondent has failed to submit a sample siting plan, in violation of the Administrative Order and 40 C.F.R. § 141.21(a).

Count IV
Failure to Notify the Public
of NPDWRs Violations

18. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any NPDWR violations, including violations of monitoring requirements, and testing procedures found in 40 C.F.R. part 141.
19. Page 9 of the Administrative Order, in paragraph 7 of the "Order" section, required Respondent to provide a public notice for the violations specified in the Administrative Order no later than May 31, 2002. The Administrative Order and 40 C.F.R. § 141.204 specify that Respondent shall give the notice by any of several methods. The Administrative Order also required Respondent to comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following

any future NPDWR violation and to submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d) .

20. Respondent failed to provide notice to the public of the violations identified in the Findings section of the Administrative Order and failed to submit to EPA a copy of any public notice of those violations, in violation of the Administrative Order and 40 C.F.R. §§ 141.201 and 141.31(d) .

Count V
Failure to Report Noncompliance
with NPDWRs to EPA

21. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141, public water systems shall report any failure to comply with the NPDWRs (40 C.F.R. part 141) to EPA within 48 hours.
22. Page 10 of the Administrative Order, in paragraph 10 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) within 48 hours.
23. Respondent failed to report to EPA instances of noncompliance detailed in the counts set forth above,

in violation of the Administrative Order and 40 C.F.R.
§ 141.31(b).

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g) (3) of the SDWA, 42 U.S.C. § 300g-3(g) (3), authorizes the Administrator to assess an administrative civil penalty of up to \$25,000 for violation of an Administrative Order issued under Section 1414(g) (1) of the SDWA. The proposed penalty has been determined in accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3. For purposes of calculating and assessing a rational and consistent penalty, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of \$3,000.00 against Respondent for violations of the Administrative Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 1414(g) (3) (B) of the SDWA, 42 U.S.C. § 300g-3(g) (3) (B), a respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that he is entitled to judgment as a matter of law.

If you wish to request a hearing, you must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within

thirty (30) calendar days after this complaint is served. If this complaint is served by mail, you have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.07(c).

If you request a hearing in your answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, you have the right under the SDWA to elect a hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, you must include in your answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Your answer and one copy must be in writing and must be sent to the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

FAILURE TO FILE AN ANSWER

To avoid entry of a default order against you pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, you must file a written answer with the Regional

Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. Your answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which you have any knowledge. Your answer should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which you intend to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation, in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. A request for a settlement conference, or any questions that you may have regarding this complaint, should be directed to the attorney listed below.

Dated this 29TH day of September, 2003.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

SIGNED

Margaret J. ("Peggy") Livingston, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-6953

IN THE MATTER OF:

PINES LODGE

DOCKET NUMBER:

SDWA-08-2003-0074

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Attachments were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via certified mail to:

Edward Sickler
Pines Lodge
POB 100
Buffalo, Wyoming 82834

Date: 9-30-03

By: SIGNED
Tiffany Mifflin

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 30, 2003.